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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8498 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements? YES
  2. To be referred to the Reporter or not? :
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO  
1 : YES; 2 to 5 : NO

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RASIK THANIYA (GAGDEKER) CHHARA

Versus

COMMISSIONER OF POLICE, AHMEDABAD

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Appearance:

MR RC KODEKAR for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 17/06/1999

ORAL JUDGEMENT

Heard learned advocates for the respective parties.

2. The present petition, preferred under Article 226 of the Constitution of India, is directed against the

order dated 21st August, 1998 made by the Commissioner of Police, Ahmedabad City, under the powers conferred upon him under Sub-section 2 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act']. The petitioner before this Court is a detenu who has been ordered to be detained under the impugned order. Alongwith the order of detention, the petitioner has also been served with the Grounds of Detention.

3. Upon perusal of the grounds of detention, it appears that three criminal cases have been lodged against the petitioner for commission of offences under Chapters XVI & XVII of the IPC. The Detaining Authority has also relied upon certain information gathered from the witnesses whose identity has not been disclosed. The order of detention has been challenged on several grounds. One of the grounds being the proximity of the cause of action and whether the acts attributed to the petitioner can be said to be prejudicial to the maintenance of public order. The three offences relied upon by the Detaining Authority pertain to house-breaking and theft alleged to have been committed by the petitioner and his accomplice in the years 1993, 1995 and 1998 respectively. The offence registered in the year 1995 i.e., on 17th July, 1995 is yet pending investigation and no chargesheet has been filed in the Court. The offence registered in the year 1998 happens to be under Secs. 399 & 402 IPC i.e., of making preparation to commit dacoity which too is still pending investigation. The information gathered from the witnesses whose identity has not been disclosed is in respect of alleged extortion of money by the petitioner and the use of weapon in public so as to intimidate the members of public.

3. In my view, neither of the three offences registered against the petitioner individually can be said to be prejudicial to the maintenance of public order. However, if series of such offences were committed the same may have an adverse effect on the public tranquillity and the people of the locality may feel insecure, causing disturbance to the public order. However, in the present case, as it is evident from the grounds of detention, there is no proximity of the offences nor there is a live link between the three offences to which breach of public tranquillity or of even tempo of living can be attributed. Besides, the information gathered from the two witnesses whose identity has not been disclosed do not appear to have been investigated. In the affidavit-in-reply to the

petition made by the Detaining Authority, he has submitted that after the last offence was registered against the petitioner, necessary investigation was made in the matter and the statements of witnesses have further disclosed that the petitioner is a dangerous person, he does not say that the statements of witnesses were found to be trustworthy or dependable. In my view, the order of preventive detention cannot be based solely on the statements of witnesses which are not investigated or the trustworthiness of which has not been examined. As discussed hereinabove, there being no proximity of occurrence of incidents for which the offences have been registered against the petitioner, it cannot be said that the cumulative effect of these offence has the effect of breach of public order. The petitioner, therefore, could not have been said to be a habitual offender and consequently a 'dangerous person' as defined in Sec. 2 (c) of the Act nor could he have been said to have acted in a manner prejudicial to the maintenance of the public order. The petitioner, therefore, could not have been detained in custody under the Act. In my view the impugned order of preventive detention made against the petitioner is not sustainable.

4. In view of the above discussion, the impugned order of detention dated 21st August, 1998; Annexure-A to the petition, is quashed and set-aside. Rule is made absolute. The petitioner, unless required in some other case, be released forthwith.

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Prakash\*